

This is to document that notices regarding transfer of this case were served by mail on the following attorneys.

1:03-cv-02913 Alpha Cord, Inc. v. New England Cord

Thomas G. Tidwell, Esq.
Kasowitz Benson Torres & Friedman
1360 Peachtree Street, NE
One Midtown Plaza, Suite 1150
Atlanta, GA 30309

Laura D. Tubbs, Esq.
Kasowitz Benson Torres & Friedman
1360 Peachtree Street, NE
One Midtown Plaza, Suite 1150
Atlanta, GA 30309

John C. Herman, Esq.
Duane Morris
1180 West Peachtree Street, NW
Suite 700
Atlanta, GA 30309-3448

Claus D. Melarti, Esq.
Duane Morris
1180 West Peachtree Street, NW
Suite 700
Atlanta, GA 30309-3448

Telka L. Johnson, Esq.
Duane Morris
1180 West Peachtree Street, NW
Suite 700
Atlanta, GA 30309-3448

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALPHA CORD, INC. and
DAVID P. MEYERS,

04 - 10449 MEL

Plaintiffs,

) Civil Action File

v.

) No. 1:03-CV-2913-JEC

NEW ENGLAND CORD BLOOD BANK,
INC. and JOHN R. RIZZA,

Defendants.

)

DEFENDANTS' STATUS REPORT AND
RENEWED MOTION TO DISMISS AND/OR TRANSFER

NOW COME Defendants New England Cord Blood Bank, Inc. ("NECBB") and John R. Rizza (collectively, "Defendants") and hereby make and file this Status Report on the parallel action involving NECBB and Alpha Cord, Inc. ("Alpha Cord") and David P. Meyers ("Meyers") in the United States District Court of Massachusetts (the "Massachusetts Action"). Because the Massachusetts Court has found that this case should proceed in Massachusetts, Defendants also renew their Motion to Dismiss this case in favor of the Massachusetts Action.

In the Massachusetts Action, that Court has taken evidence and heard arguments on the merits of this case in connection with NECBB's motion for preliminary injunction. The Massachusetts Court has also heard argument and

taken evidence on Alpha Cord's and Myers' motion to stay the Massachusetts Action and motion to transfer that action to this Court. The Court held a hearing on those motions on October 23, 2003.

On January 12, 2004, the Massachusetts Court sent notice to the parties that a scheduling conference would occur on February 20, 2004. A true and correct copy of this Notice is attached hereto as Exhibit A. Thereafter, on January 21, 2004, the Massachusetts Court issued a 12-page opinion, a true and correct copy of which is attached hereto as Exhibit B, denying the motions to stay and transfer the Massachusetts Action and denying NECBB's motion for a preliminary injunction.

In rejecting Alpha Cord's motion to transfer, the Massachusetts Court acknowledged that the "first filed" rule generally dictates which federal court action should proceed. The Court, however, specifically found that the "balance of the conveniences weighs in favor of" the Massachusetts Action. (Exhibit B at 5). The final consideration addressed by the Court was that, under the parties' agreement, Massachusetts law was to be applied to this case. The Court therefore decided that the case should not be transferred and that the Massachusetts Action will proceed.

Accordingly, since the merits of this case are proceeding before the Massachusetts Court, Defendants respectfully renew their motion to dismiss this action in favor of the Massachusetts Action. That Court has already heard

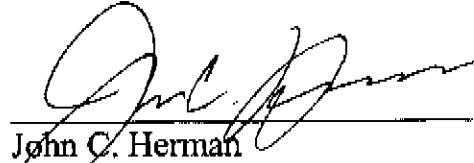
evidence and reviewed the merits of the claims – at least on a preliminary basis. That Court is also in a better position to determine and apply Massachusetts law to the case. In the interests of judicial economy, this action should be dismissed in favor of the Massachusetts Action.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court dismiss this case in favor of the Massachusetts Action.

Respectfully submitted, this 27th day of January, 2004.

DUANE MORRIS LLP



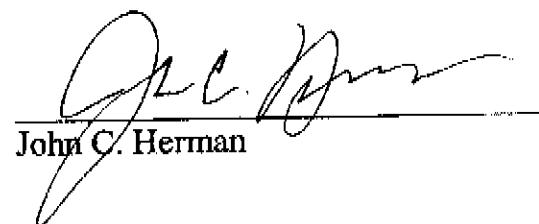
John C. Herman
(Ga. Bar No. 348370)
Claus D. Melarti
(Ga. Bar No. 501181)
Telka L. Johnson
(Ga. Bar No. 395485)

1180 West Peachtree Street
Suite 700
Atlanta, Georgia 3009-3448
(404) 253-6900 (telephone)
(404) 253-6901 (facsimile)

Counsel for Defendants
NEW ENGLAND CORD BLOOD BANK,
INC. and JOHN R. RIZZA

L.R. 7.1(D), N.D. GA. CERTIFICATE

Pursuant to L.R. 7.1(D), N.D. Ga., I hereby certify that the foregoing Defendants' Status Report and Renewed Motion to Dismiss And/Or Transfer has been prepared using Times New Roman Fourteen (14) point font as required by the Court in L.R. 5.1(B), N.D. Ga.



John C. Herman

A handwritten signature in black ink, appearing to read "J.C. Herman", is written over a horizontal line. Below the line, the name "John C. Herman" is printed in a smaller, standard font.

U.S. District Court
U.S. District Court for the Northern District of Georgia (Atlanta)

CLOSED 4 MOS

CIVIL DOCKET FOR CASE #: 03-CV-2913

Alpha Cord, Inc., et al v. New England Cord, et al
Assigned to: Judge Julie E. Carnes Filed: 09/26/03
Demand: \$13,089,000 Jury demand: Plaintiff
Lead Docket: None Nature of Suit: 190
Dkt # in DeKalb State Court : is 03A104165 Jurisdiction: Diversity

Cause: 28:1441 Petition for Removal- Breach of Contract

ALPHA CORD, INC.
plaintiff

Thomas G. Tidwell
[COR LD NTC]
Laura D. Tubbs
[COR LD NTC]
Kasowitz Benson Torres &
Friedman
1360 Peachtree Street, NE
One Midtown Plaza, Suite 1150
Atlanta, GA 30309
404-260-6080

DAVID P. MEYERS
plaintiff

Thomas G. Tidwell
(See above)
[COR LD NTC]
Laura D. Tubbs
(See above)
[COR LD NTC]

NEW ENGLAND CORD BLOOD BANK,
INC.
defendant

John C. Herman
[COR LD NTC]
Claus D. Melarti
404-351-6175
[COR LD NTC]
Valerie L. Johnson
404-253-6942
[COR LD NTC]
Duane Morris
1180 West Peachtree Street, NW
Suite 700
Atlanta, GA 30309-3448
404 253-6900

JOHN R. RIZZA

... John C. Herman

Docket as of February 26, 2004 4:27 pm

Page 1

NOT A TRADE COPY
03/02/2004 10:16

FEB 26 2004

Luther G. Gray
By *[Signature]*
Deputy Clerk

Proceedings include all events.
1:03cv2913 Alpha Cord, Inc., et al v. New England Cord, et al
defendant

CLOSED

4 MOS

(See above)
John D. Melarati
(See above)
(See above)
John C. Johnson
(See above)
(See above)

Proceedings include all events.

		CLOSED
	1:03cv2913 Alpha Cord, Inc., et al v. New England Cord, et al	
9/26/03 1	NOTICE OF REMOVAL with COMPLAINT (Pretrial instructions attached to service copies and returned to attorney for service.) FILING FEE \$ 150.00 RECEIPT # 511592 (jdb) [Entry date 09/29/03]	4 MOS
9/26/03 1	MOTION by plaintiff Alpha Cord, Inc. for preliminary injunction with brief in support. (jdb) [Entry date 09/29/03]	
9/26/03 2	MOTION by defendants to dismiss with declaration of John R. Rizza and with brief in support. (jdb) [Entry date 09/29/03]	
10/3/03 3	REQUEST by plaintiff for expedited hearing on their motion for preliminary injunction and dfts' motion to dismiss (jph) [Entry date 10/07/03]	
10/7/03 4	Brief by plaintiffs in opposition to [2-1] motion to dismiss (jph) [Entry date 10/08/03]	
10/10/03 5	Opposition by defendants to the [3-1] motion for expedited hearing on their motion for preliminary injunction and motion to dismiss (jph) [Entry date 10/14/03]	
10/14/03 6	Notice of filing original affidavit by plaintiffs. (jph) [Entry date 10/16/03]	
10/15/03 7	ORDER by Judge Julie L. Carnes DENYING [3-1] motion for expedited hearing on their motion for preliminary injunction and dfts' motion to dismiss by David P. Meyers, Alpha Cord, Inc. (cc by CRD) (jph) [Entry date 10/16/03]	
10/16/03 --	SUBMITTED to Judge Julie L. Carnes on [1-1] motion for preliminary injunction and dfts' motion to dismiss (jph) [Entry date 10/16/03]	
10/22/03 8	Reply brief in support of [3-1] motion to dismiss by defendants. (jph) [Entry date 10/24/03]	
11/6/03 9	SUPPLEMENTAL REQUEST by plaintiffs for hearing on their motion for preliminary injunction and dfts' motion to dismiss. (jph) [Entry date 11/10/03]	
11/10/03 10	Defendants' opposition to [1-1] motion for hearing on their motion for preliminary injunction and dfts' motion to dismiss (jph) [Entry date 11/13/03]	
11/18/03 11	Memo by CRD directed to [redacted] to submit a status report within 5 days regarding the Massachusetts action and responding to pla's supplemental request for hearing. (cc by CRD) (jph) [Entry date 11/20/03]	
11/25/03 12	Notice of filing copy of service on John Rizza by plaintiffs. (jph) [Entry date 12/01/03]	

Proceedings include all events.

1:03cv2913 Alpha Cord, Inc., et al v. DFTS and Cord, et al CLOSED

4 MOS

12/1/03 -- SUBMITTED to Judge John R. Barnes on [9-1] motion for hearing on their motion for preliminary injunction and dfts' motion to dismiss (file in chambers) (jph) [Entry date 12/01/03]

1/27/04 13 STATUS REPORT by Plaintiff New England Cord, defendant John R. Rizza. (jdb) [Entry date 01/28/04]

1/27/04 13 MOTION by defendant John Rizza to dismiss and/or transfer (jdb) [Entry date 01/27/04]

2/13/04 -- SUBMITTED to Judge John R. Barnes on [13-1] motion to dismiss and/or transfer (jdb) [Entry date 02/13/04]

2/18/04 14 Notice to parties of ORD, directing parties to file Joint Certificate of Justification (JJC) and Joint prel stmt by 3/1/04 [14-1] and [14-2] submitted on 3/3/04 (jlm) [Entry date 02/18/04]

2/25/04 15 ORDER by Judge John R. Barnes GRANTING as unopposed dft's [13-2] motion to dismiss, DENYING dft's [13-1] motion to hearing on their motion for preliminary injunction and dfts' motion to dismiss, DENYING AS MOOT dfts' motion to dismiss and for preliminary injunction. (cc) (jlm) [Entry date 02/25/04]

2/25/04 -- Transmittal of court documents, certified copy of order transferring case to the United States District Court for the District of Massachusetts. (jlm) [Entry date 02/25/04]

2/25/04 -- Case terminated. (jlm) [Entry date 02/26/04]